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ADDRESS

TO THE

JURYMEN

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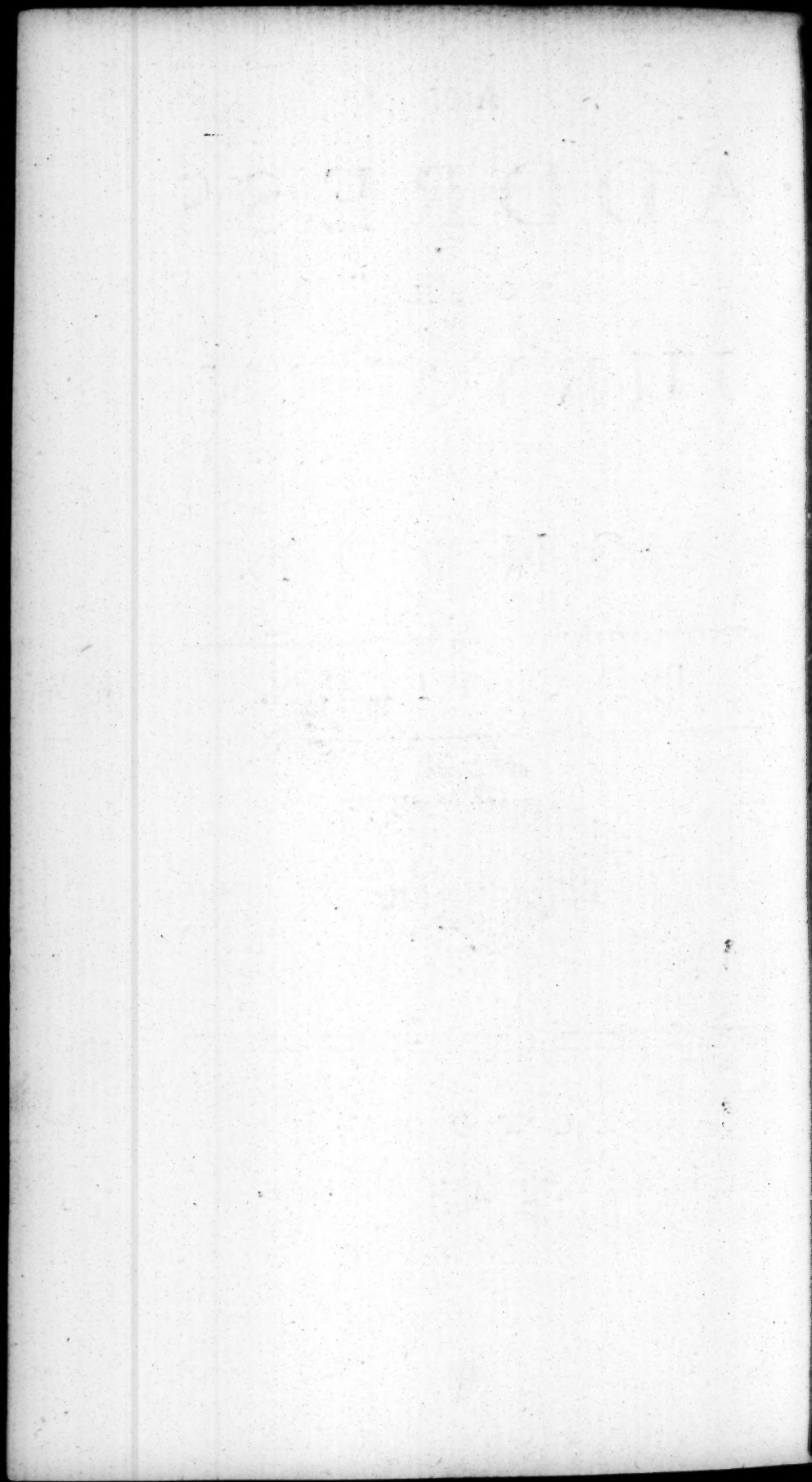
LONDON.

By a CITIZEN.



LONDON:

Printed in the Year M.DCC.LV.



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A D D R E S S
T O T H E
J U R Y M E N *of* L O N D O N .

IN this ludicrous Age, when nothing that's serious is ever attended to, when the Dangers which our Country is manifestly exposed to, are made the Subject of Ridicule, and when every Man laughs at the Misfortunes or Oppressions of his Neighbour, provided they be such as do not immediately affect himself, I fear it is in vain to attempt to rouse People out of that enchanting Fit of private Indolence, and publick Diversion, which they have been artfully thrown into, by those who dare not themselves, and are afraid that others should reflect seriously upon some Parts of their late Conduct.—However vain this Attempt may be with regard to publick Affairs, yet when any Doctrine is begun to be inculcated, which certainly will affect the private Circumstances of every Man in the Kingdom, it cannot, I think, fail of commanding our Attention; and therefore, I hope, you will give your Attention to the following REMARKS upon the Doctrine of late so industriously propagated, That a Jury are Judges of nothing but FACT,

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and therefore, ought always to return a **SPECIAL VERDICT**, when they think the **Fact** has been proved, but at the same Time think, that it is not such a criminal **Fact** as is charged in the Indictment.

This Doctrine, if once establish'd, would root up that Fence which our Ancestors have provided against the Oppression of a malicious or corrupt Court of Justice, and is so contrary to the Opinion of our best Lawyers, that I am surprized at its being countenanced by any Man of common Sense, who pretends to common Honesty. But as the Opinion of an anonymous Writer could not have any great Weight in such a Case, I shall give you the following Extracts from a Pamphlet, intitled, *The Englishman's Right*, by Sir John Hawles, Knight, Solicitor-General to the late King William *; which was wrote by way of Dialogue between a Lawyer and a Jurymen.

The Dialogue, after shewing the Antiquity of Juries, the Danger of departing from this Method of Trial, and the proper Business of the Judges upon every such Trial, proceeds thus :

Jurymen. But I have been told, That a Jury is only Judge of naked *Matter of Fact*, and are not at all to take upon them to *meddle with*, or regard *Matter of Law*, but leave it wholly to the Court.

Barrister. 'Tis most true, Jurors are Judges of Matters of Fact, that is their *proper Province*, their chief Business ; but yet not *excluding* the Consideration of Matter of Law, as it *arises* out of, or is *complicated* with, and *influences* the Fact. For to say, they are not at

* Printed for J. SHUCKBURGH in Fleet-Street.

all to meddle with, or have respect to Law in giving their Verdicts, is not only a *false* Position, and contradicted by every Day's *Experience*; but also a very *dangerous and pernicious* one, tending to defeat the principal End of the Institution of Juries, and so subtilly to *undermine* that which was *too strong* to be *batter'd down*.

1. *It is false*: For though the Direction, as to Matter of Law separately, may belong to the Judge, and the finding the Matter of Fact does peculiarly belong to the Jury; yet must your Jury also *apply Matter of Fact and Law together*; and from their Consideration of, and a right Judgment upon both, bring forth their Verdict: For do we not see in most General Issues, as upon *Not Guilty*, pleaded in *Trespass*, Breach of the Peace, or *Felony*, though it be Matter *in Law* whether the Party be a *Trespasser*, a Breaker of the Peace, or a *Felon*; yet the Jury do not find the *Fact* of the Case by itself, leaving the Law to the Court; but find the Party *guilty*, or *not guilty* generally. So as though they answer not to the Question singly, *what is Law*, yet they determine the Law in all Matters where Issue is joined. So likewise, is it not every Day's Practice, that when Persons are indicted for *Murder*, the Jury does not only find them *guilty* or *not guilty*, but many Times, upon hearing and weighing of Circumstances, bring them in, either *guilty* of *Murder*, *Manslaughter*, *per Infortunium*, or *se Defendendo*, as they see Cause. Now do they not herein *complicatedly resolve* both Law and Fact? And to what End is it, that when any Person is prosecuted upon any *Statute*, the Statute itself is usually read to the Jurors, but only that they
may

may judge, whether or no the Matter be within that Statute? But, to put the Business out of Doubt, we have the *Suffrage* of that Oracle of Law, *Littleton*, who, in his *Tenures*, Sect. 368. declares, *That if a Jury will take upon them the Knowledge of the Law upon the Matter, they may*. Which is agreed to, likewise by *Coke* in his Comment thereupon. And therefore it is *false* to say, That the Jury hath not Power, or doth not use frequently to apply the Fact to the Law; and thence taking their *Measures*, judge of, and determine the *Crime* or *Issue* by their Verdict.

2. As Juries have ever been *vested* with such Power by Law, so to exclude them from, or *disseize* them of the same, were utterly to defeat the End of their Institution. For then, if a Person should be indicted for doing any common innocent Act, if it be but clothed and disguised in the Indictment with the Name of Treason, or some other high Crime, and proved by Witnesses to have been done by him; the Jury, though satisfied in Conscience, that the Fact is not any such Offence as it is called; yet because (according to this fond Opinion) they have no Power to judge of *Law*, and the *Fact* charged is fully *proved*, they should, at this Rate, be bound to find him *guilty*: And being so found, the Judge may pronounce Sentence against him; for he finds him a convicted Traitor, &c. by his Peers. And thus as a certain Physician boasted, That he had *killed one of his Patients with the best Method in the World*; so here should we have an *innocent* Man hang'd, drawn, and quarter'd, and all according to *Law*.

Jurym.

Jurym. God forbid that any such Thing should be practised ; and indeed I do not very fully understand you.

Barr. I do not say it ever hath been, and I hope it never *will be* practised : But this I will say, that, according to this Doctrine, it *may be* ; and consequently Juries may thereby be rendered rather a *Snare*, or Engine of Oppression, than any Advantage or *Guardian* of our legal Liberties against arbitrary Injustice, and made mere *Properties* to do the *Drudgery*, and bear the *Blame* of unreasonable *Prosecutions*. And since you seem so dull as not to perceive it, let us put an imaginary Case, not in the least to abet any Irreverence towards his Majesty, but only to explain the Thing, and shew the Absurdness of this Opinion.——Suppose then a Man should be indicted, *For that he is a false Traitor, not having the Fear of God before his Eyes, &c. did traiterously, presumptuously, against his Allegiance, and with an Intent to affront his Majesty's Person and Government, pass by such or such a Royal Statue or Effigies with his Hat on his Head, to the great Contempt of his Majesty and his Authority, the evil Example of others, against the Peace, and his Majesty's Crown and Dignity.* Being hereupon arraigned, and having pleaded, *Not Guilty*, suppose that sufficient Evidence should swear the Matter of Fact laid in the Indictment, viz. *That he did pass by the Statue or Picture with his Hat on* ; now imagine yourself one of the Jury that were sworn to try him, What would you do in the Matter ?

Jurym. Do ! Why I should be satisfied in my Conscience, that the Man had not herein
com-

committed *any Crime*; and so I would bring him in *Not Guilty*.

Barr. You *speake* as any honest Man would do: But I hope you have not forgot *the Point* we were upon. Suppose therefore, when you thought to do thus, the *Court*, or one of your *Brethren*, should take you up, and tell you, That it was out of your Power so to do: For look ye (saith he) my Masters! we Jurymen are only to find Matter of *Faët*, which being fully proved, as in this Case before us it is, we must find the Party guilty: Whether the Thing be Treason or not, does not belong to us to inquire; it is said so here, you see, in the *Indictment*; and let the Court look to that, they know best, we are not Judges of Law: Shall we meddle with *Niceties* and *Punctilios*, and go contrary to the *Directions* of the Court? So perhaps we shall bring ourselves into a *Præmunire* (as they say) and perhaps never be suffered to be Jurymen again. No, no, the Matter of *Faët* you see is proved, and that is our Business; we must go according to our Evidence, we cannot do less: Truly it is something hard, and I pity the poor Man, but we cannot help it, &c. After these notable Documents, What would you do?

Jurym. I should not tell what to say to it: For I have heard several *antient* Jurymen speak to the very same Effect, and thought they talk'd very wisely.

Barr. Well then, Would you consent to bring in the Man guilty?

Jurym. Truly, I should be somewhat *unwilling* to do it; but I do not see which way it can be avoided, but that he must be found guilty of the *Faët*.

Barr.

Barr. God keep every honest Body from such
Jurymen : Have you no more Regard to your
Oath ? to your *Conscience* ? to *Justice* ? to the
Life of a Man ?

Jurym. Hold ! hold ! perhaps we would not
 bring him in *Guilty* generally, but only guilty
 of the Fact, finding no more but *guilty of pas-*
sing by the Statue with his Hat on.

Barr. This but poorly mends the Matter,
 and signifies little or nothing : For such a find-
 ing hath generally been *refused* by the Court,
 as being *no Verdict* ; though it is said, it was
 lately allowed somewhere in *a Case that required*
Favour. But suppose it were accepted, What
 do you intend should become of the Prisoner ?
 Must not he be kept in Prison 'till all the Judges
 are at Leisure, and willing to meet and *argue*
 the Business ? Ought you not, and what Rea-
 son can you give why you should not absolutely
 acquit and discharge him ? Nay, I do aver,
 you are bound by your *OATHS* to do it, by
 saying with your *Mouths* to the Court, what
 your *Consciences* cannot but dictate to yourselves,
Not Guilty : For, pray consider, Are you not
 sworn, *That you will well and truly try, and*
true Deliverance make ? There is none of this
 Story of *Matter of Fact*, distinguish'd from
 Law in your Oath. But you are, *well*, that is,
fully and truly, that is, *impartially*, to try the
 Prisoner. So that if upon your *Consciences*,
 and the best of your *Understanding*, by what is
 proved against him, you find he is guilty of
 that *Crime* wherewith he stands charged, that
 is, deserving *Death*, or such *other Punishment*
 as the Law inflicts upon an Offence so *denomi-*
nated ; then you are to say, he is *Guilty.* But
 B if

if you are not satisfied, that either the *Act* he has committed was Treason, or other Crime, (though it be never so often *called so*) or that the *Act* itself, if it were so criminal, was not *done*; then what remains but that you are to acquit him? For the End of Juries is to preserve Men from *Oppression*, which may happen as well by *imposing* or ruining them for that, as a *Crime*, which indeed is *none*, or, at least, not such, or so *great*, as is pretended; as by charging them with the Commission of that, which, in Truth, was *not committed*. And how do you *well and truly try, and true Deliverance make*; when indeed you do but deliver him up to others to be *condemned*, for that which yourselves do not believe to be any *Crime*?

Jurym. Well; but the *supposed Case* is a Case *unsupposable*. It is not to be imagin'd, that any such Thing should happen, nor to be thought that the Judges will condemn any Man, though brought in guilty by the Jury, if the Matter in itself be not so *criminal* by Law.

Barr. It is most true, I do not believe that ever *that Case* will happen. I put it in a Thing of apparent *Absurdity*, that you might the more clearly observe the Unreasonableness of this Doctrine; but withal, I must tell you, That it is not impossible that some *other Cases* may really happen, of the same or the *like Nature*, though more *fine* and plausible. And though we apprehend not, that during the Reign of his Majesty that now is, (*whose Life God long preserve*) any Judges will be made that would *wrest the Law*; yet what Security is there, but that some *Successors* may not be so cautious in their Choice? And though our *Benches* of
Judica-

Judicature be at present furnished with Gentlemen of great Integrity, yet there may one Day happen some *Trefilian*, or Kinsman of *Empson's*, to get in, (for what *has been*, may be) who, *Empson-like* too, shall pretend it to be for his Master's Service, to increase the Number of Criminals, that his Coffers may be *filled* with *Fines* and *Forfeitures*: And then such Mischiefs may arise. And Juries having upon Confidence parted with their just Privileges, shall *then, too late*, strive to re-assume them, when the Number of ill Precedents shall be vouched to enforce that as of *Right*, which in Truth was at first a *Wrong* grounded on *Easiness* and *Ignorance*. Had our *wise and wary* Ancestors thought fit to depend so far upon the *contingent Honesty* of Judges, they needed not to have been so *zealous* to continue the Usage of *Juries*.

Jurym. Yet still I have heard, that in every Indictment, or Information, there is always something of *Form* or *Law*, and something else of *Fact*; and it seems reasonable, that the Jury should not be bound up *nicely* to find every *Formality* therein expressed, or else to acquit (perhaps) a notorious Criminal. But if they find the *essential Matter* of the Crime, then they ought to find him guilty.

Barr. You say *true*, and therefore must note, that there is a *wide Difference* to be made between *Words of Course*, raised by Implication of Law, and *essential Words* that either *make*, or really *aggravate* the Crime charged. The Law does suppose and imply every Trespass, Breach of the Peace, every Felony, Murder, or Treason, to be done *Vi Et Armis*, with

Force and Arms, &c. Now, if a Person be indicted for Murder, by *Poison*, and the Matter proved, God forbid the Jury should scruple the finding him *Guilty* upon the Indictment, merely because they do not find that Part of it, as to *Force and Arms*, proved. For that is implied as a necessary or allowable *Fiction* of Law.

But on the other Side, when the Matter in Issue in itself, and taken as a naked Proposition, is of such a Nature, as no Action, Indictment, or *Information* will lie for it *singly*, but it is *worked up* by special Aggravations into Matter of *Damage* or *Crime*; as that it was done to *scandalize the Government*, to *raise Sedition*, to *affront Authority*, or the like, or with such or such an *evil Intent*: If these Aggravations, or some *overt Act* to manifest such ill Design or Intention, be not made out by *Evidence*, then ought the Jury to find the Party *Not Guilty*.

Here the Author gives Part of a Sermon preached by Bishop *Latimer* before *Edward VI.* which (according to the modern Method of *Innuendo*) a pliant Judge would certainly declare to be a false, scandalous, malicious, and seditious Libel against the Government, if the Jury should so far betray the Trust reposed in them, as to leave it to his Judgment, by returning a *special Verdict*.

A little after the Dialogue goes on thus:

Jurym. This is a Matter well worthy the Consideration of all Juries; for indeed, I have often wondered to observe the *Adverbs* in Declarations, Indictments, and Informations in some Cases to be harmless *Vinegar and Pepper*, and in others *Henbane steeped in Aqua Fortis*.

Barr.

Barr. That may easily happen, where the Jury does not *distinguish* legal Implications, from such as constitute, or materially *aggravate*, the Crime; for if the Jury shall honestly refuse to find the *latter* in Cases where there is not direct Proof of them, *viz.* That such an Act was done *Falsly, Scandalously, Maliciously*, with an Intent to *raise Sedition, defame the Government*, or the like, their Mouths are not to be stopt, nor their Consciences satisfied with the Court's telling them—*You have nothing to do with that, it's only Matter of Form, or Matter of Law, you are only to examine the Fact, whether he spoke such Words, writ or sold such a Book, or the like:* For, now if they should ignorantly take this for an Answer, and bring in the Prisoner *Guilty*, though they mean and intend of the *naked Fact* or bare Act only; yet the Clerk recording it, demands a further Confirmation, saying to them, thus: *Well, then, you say A. B. is Guilty of the Trespass or Misdemeanour in Manner and Form as he stands Indicted, and so you say all?* To which the Foreman answers for himself and his Fellows, *Yes.* Whereupon the Verdict is drawn up—*Juratores super sacramentum suum dicunt, &c.* The Jurors do say upon their Oaths, that A. B. maliciously, in Contempt of the King and the Government, with an Intent to scandalize the Administration of Justice, and to bring the same into Contempt, or to raise Sedition, &c. (as the Words before were laid) *spake such Words, published such a Book, or did such an Act, against the Peace of our Lord the King, his Crown and Dignity.*

Thus a *Verdict*, so called in Law, *quasi veritatis*, because it ought to be the *Voice or Saying*

ing of *Truth* itself, may become composed in its *material* Part of *Falshood*. Thus twelve Men ignorantly drop into a *Perjury*. And will not every conscientious Man tremble to *pawn his Soul* under the sacred and dreadful Solemnity of an *Oath*, to attest and justify a *Lye upon Record* to all Posterity? besides the *Wrong* done to the Prisoner, who thereby perhaps comes to be *hanged*, (and so the Jury in *foro conscientiae* are certainly guilty of his *Murder*;) or at least by *Fine* or *Imprisonment*, undone with all his Family, whose just *Curses* will fall heavy on such unjust Jurymen, and all their *Posterity*, that against their *Oaths* and *Duty* occasioned their causeless Misery. And is all this, think you, nothing but a Matter of *Formality*?

Jurym. Yes, really, a Matter of *vast Importance* and *sad* Consideration; yet I think you charge the Mischiefs done by such Proceedings a little *too heavy* upon the *Jurors*: Alas, good Men! they *mean no Harm*, they do but follow the *Directions* of the Court; if any body ever happen to be to blame in such Cases, it must be the *Judges*.

Barr. Yes, forsooth! That's the Jurymens *common Plea*; but do you think it will hold good in the Court of Heaven? 'Tis not enough that we *mean no Harm*, but we must *do none neither*, especially in Things of that Moment; nor will *Ignorance* excuse, where 'tis *affected*, and where *Duty* obliges us to *inform* ourselves better, and where the Matter is so *plain* and easy to be understood.

As for the *Judges*, they have a fairer Plea than you, and may quickly return the *Burthen*
back

back upon the Jurors ; for we, may they say, did nothing but our Duty, according to usual Practice, the Jury his Peers had found the Fellow Guilty upon their Oaths of such an odious Crime, and attended with such vile Presumptions, and dangerous Circumstances. They are Judges, we took him as they presented him to us, and according to our Duty pronounced the Sentence that the Law inflicts in such Cases, or set a Fine, or ordered corporal Punishment upon him, which was very moderate, considering the Crime laid in the Indictment or Information, and of which they had so sworn him Guilty ; if he were innocent, or not so bad as represented, let his Destruction lie upon the Jury, &c. At this Rate, if ever we should have an unconscionable Judge, might he argue ; and thus the Guilt of the Blood or Ruin of an Innocent Man, when 'tis too late, shall be bandyed to and fro, and shuffled off from the Jury to the Judge, and from the Judge to the Jury, but really sticks fast to both, but especially on the Jurors ; because the very End of their Institution was to prevent all Dangers of such Oppression ; and in every such Case, they do not only wrong their own Souls, and irreparably injure a particular Person, but also basely betray the Liberties of their Country in general ; for as without their ill Compliance and Act, no such Mischief can happen ; so by it, ill Precedents are made, and the Plague is increased, honest Juries are disheartened or seduced by Custom from their Duties, just Privileges are lost by Disuser, and perhaps within a while some of themselves may have an Hole pick'd in their Coats, and then they are tried by another Jury just as wise and honest, and so deservedly

deservedly come to smart under the ruining *Effects* and *Example* of their own Folly and Injustice.

The Author afterwards shews, that no Jury can be punished for giving their Verdict according to their Consciences; and the best of their Judgment, on which Occasion he cites the famous Case of *Pen* and *Mead*, in King *Charles* the Second's Reign, wherein the Jury at first brought in a Sort of special Verdict, which the Court would not receive, and thereupon they at last brought in the General Verdict, *Not Guilty*, which they ought to have done at first; for though the Fact had been fully proved, it was a Fact which the Jury did not think Criminal; however, an Attempt was made to impose a Fine upon them, which upon a solemn Hearing was over-ruled by the Court of *Common Pleas*.

From all which it is evident, that however heinous a Fact may be represented by hard Words and artful *Inuendoes* in an Indictment or Information, the Jury may with Impunity, and ought in Conscience to bring in the General Verdict, *Not Guilty*, not only when they think the Fact has not been proved by sufficient Witnesses, but also when they think the Fact is not such a heinous criminal Fact as is charged in the Indictment or Information; and to render this still more clear, I shall suppose a Case which could not exist when this Author wrote: Suppose a Man should be indicted upon the Statute 4 *Anne*, Ch. 8. for having maliciously and directly, by advised Speaking, affirmed that the Kings and Queens of this Realm, with Authority of Parliament, cannot by Laws limit the

the Crown, and the Descent thereof; and suppose there should be a full Proof of his having spoken such Words, but no Proof of his having spoken them *maliciously* and *advisedly*, Could a Jury bring such a Man in, *Guilty*? Could they in Conscience bring in a *special Verdict*? If they did, and the Judge should condemn him upon such a Verdict, the Jury as well as the Judge would be guilty of Oppression! and if the Man so unjustly found Guilty, should die for Want, they would all be guilty of his Murder.

But this of being accessary to the Ruin and Murder of an innocent Man, is not the only Crime; for by returning a *special Verdict*, when they ought to return *the general Verdict*, *Not Guilty*, they may be accessary to the Ruin or Murder of the Liberties of their Country; because, should this Doctrine, that Juries are Judges of nothing but merely the Fact, and no way concerned with the Question, whether the Fact proved be such a Fact as is laid in the Indictment: I say, should this Doctrine be once established, which it may be by repeated Precedents, no Man could be safe against the Resentment of an angry Minister, who had got the Bench filled with such Judges as would follow his Direction, which is not at all impossible, notwithstanding the Clause in the Act of Settlement relating to our Judges, especially if such Minister should have a Parliament at his Devotion.

A slavish Submission to the Ministerial *Fiat* would then be a Man's only Security; and Prosecutions for seditious Words or Libels would in this Country, as it was among the

Romans after they had lost their Liberties, be made the Rivet for this slavish Submission; for, according to the Doctrines of our modern Lawyers, such Prosecutions are here more dangerous, if possible, than they were at *Rome*. And Gentlemen must not imagine, that *Printers* and *Booksellers* are the only Persons liable to Prosecutions for seditious Libels, because Writing, or Painting, as well as Printing, may be deemed a Libel, without Regard to its being true or false, plain or ironical: Nay, it is said, that a Man may be indicted for having a Libel in his House. In short, the Doctrine of Libels has of late been rendered so vague and indeterminate by our Lawyers, that no Caution can secure a Man against a Prosecution, nor can he, however innocent, have any certain Security against a Conviction, but that of a Jury's exerting the Power that of Right belongs to them, which is that of determining, by their *general Verdict*, the Law as well as the Fact in every such Case; and whatever Lawyers may say, no Man surely will, upon a Jury swear, that a Man is guilty of publishing a *false Libel*, when it is *notoriously* known, that every Word of it is true. I am,

GENTLEMEN,

Your faithful Friend and Fellow-Citizen,

&c. &c.

THE

THE FOLLOWING
LETTER,

Is proper to be Read by all JURYMEN.

Nolumus Leges Angliæ mutari.

S I R,

IT is an Englishman's peculiar Happiness, that as he is born to inherit his Lands, so he is to inherit the Laws, which are his Birthright; and if he would keep the One, he must be careful to preserve the Other. The Laws are the Palladium of Property; they are the surest Safeguard of our Lives, and the strongest Fence to our Lands. All Law is, or ought to be, Right Reason; but there ever was, and always will be, a Struggle between Mens Reason and their Passions, between Law and Arbitrary Power. The Laws of this Nation, as by a Compact with the Crown in the Magna Charta of this Kingdom appear, do indeed defend and secure the Lives, Liberties and Properties of the Subject, as far as human Prudence could devise. But the grand or principal Law of this Land, on which the Justice of all the rest depend, is that for trying all Disputes and Differences between Subject and Subject, and all Crimes against the Crown, *per Pares*, or by a Jury of twelve honest Men, of the same Rank and Degree with the Persons disputing or accused; who are to be elected without Prejudice of Party, and are bound by Oath to try such Dispute, Difference or Crime, according to the best of their Understandings, and to bring in according to their Consciences an impartial Verdict.

Our Ancestors were indeed so justly jealous of their Liberties, and so careful to arm against any unjust Prosecutions of the Crown, that they fixed Grand Juries as an Advanced Guard, who were, before any Prosecution could be carried on, to find it *Billa vera*, that there was just Cause or Reason for it. But this grand Barrier of

British Liberty has been often bore down by Arbitrary Power, and Prosecutions carried on against the Subject by Star-Chamber Informations. But though Prosecutions by Information are now become common, yet they are nevertheless a National Grievance, and a very great Encroachment upon our Laws and Liberties, and should therefore teach us to be more vigilant and careful in keeping those Rights which yet remain. Tho' Trials *per Parces*, or by a Jury of twelve honest Men, of equal Rank with the Person tried, is yet left us, and is indeed the great Law on which all our Lives, Liberties, and Properties depend, yet there has been lately a Doctrine inculcated that tends to destroy the very Use and Essence of them : That which Arbitrary Power cannot batter down, it may undermine.

The Forms of Juries, as of Parliaments, have by long Usage been render'd too sacred to be attack'd ; but what does the Form of any thing avail without the Use ? As Hypocrisy in Religion is a great Affront and Mockery of God, so good Forms kept up in any State, are, when turn'd to bad Uses, a gross Affront and Mockery of the People.

It has lately been by some confidently asserted, that Juries are not Judges of Law, but of Fact only : What can be more false ? What more injurious to the Subject ? Or, What can tend more to overturn all our Laws and Liberties ? For if this pernicious Doctrine should be allow'd, Juries would be so far from being a Security to the Subject, that they would be then a Snare ; and that which our Ancestors intended as a Bulwark to defend our Lives and Properties, would become a strong Engine to batter them down ; because any Person might then be prosecuted for the most innocent Action ; nay, indeed, for acting according to any Law of the Land, which Arbitrary Power did not like, and found guilty, and punish'd at the Pleasure of the Court ; for they need only to charge such Action in the Information to be seditious, traitorous, &c. and then to prove the Fact, and the Jury must of Course bring him in guilty, if they are not Judges of Law, but of Fact only. But this wicked Doctrine, that tends to subvert all our Laws and Liberties, is not more contrary to Reason than Practice : For do not Juries, upon all Indictments for Murder, take upon themselves to judge whether the Prisoner

Prisoner be guilty of Murder or Manslaughter, and find accordingly? When a Person is prosecuted upon any Statute, is not such Statute usually read to the Jurors? For what Reason? But because they should judge whether the Matter of the Person accused be within such Statute or not. Are they not then Judges of Law as well as Fact? Is not the Juror's Oath, *That he will well and truly try, and true Deliverance make*, that is, that they will fully, truly and impartially try the Prisoner, whether he be guilty of the Crime laid to his Charge or not, and according to their Consciences either acquit or condemn him. In their Oath there is nothing of this new, unjust, and dangerous Distinction between Matter of Law and Matter of Fact, but they are sworn to try the Prisoner impartially, and, according to the best of their Understandings, to bring him in guilty or not guilty. The first Part of a Jury's Consideration is indeed, whether the Matter laid to the Charge of the Prisoner be a Crime or not; the second, whether or no he committed it. If the Matter laid to the Charge of the Prisoner be not itself a Crime, how can any Jury, without breaking their Oaths, bring him in guilty of the Fact? Is it not the greatest Absurdity to say, that a Man is guilty of an innocent Action? Can Innocence be Guilt? Whenever a Jury bring in a Prisoner guilty of the Fact, yet not being convinced in their Consciences of the Crime of it, leave that to the Court, it is commonly call'd a Special Verdict; but the proper Appellation is indeed, Special Perjury, because they do not, according to their Oaths, *well and truly try, and true Deliverance make*: For when a Jury are not convinced in their Consciences, that both the Matter laid against the Prisoner be such a Crime as mention'd in the Indictment, and that he also committed it, they are bound by their Oaths to bring him in Not guilty.

Juries should indeed always consider by what Method the Prisoner before them stands accused; if he does not stand there according to the common legal Manner by a Presentment of a Grand Jury, but by Information, they may then very reasonably suspect, that the Prisoner's Crime is not such as it is call'd; because Prosecutions by Information are seldom brought, but when no Grand Jury will find the Bill; and therefore they should in such Cases always supply the Place of a Grand Jury, by
taking

taking upon themselves to determine the Nature of the Crime, and not by an iniquitous Special Verdict cast the Prisoner, as it were, into the Power of his Prosecutor. Juries are bound to see with their own Eyes, and not through the Opticks of the Bench; nor are their Consciences to be controll'd by the Court.

There are Cases indeed relating to Property, that often happen between Subject and Subject, which are more intricate, and require nice Distinctions; here the Judges must help the Jury to distinguish: But in all Criminal Cases, between the Crown and Subject, the Crime of the Fact, as well as the Fact itself, should always be fully and clearly proved to the Satisfaction of the Consciences of the Jury, or otherwise they cannot, without Perjury, bring in the Prisoner Not Guilty.

Lawyers often puzzle themselves, and perplex others, with nice and subtle Distinctions about the true Meaning of Words; and I think they have differed in Opinion in no one more, than in the Word *Libel*. Some Lawyers will say, That a Libel may be either true or false; and that its Truth makes it rather more a Libel, than if it was false: But who was ever yet prosecuted for Writing or Publishing a Libel that was true? I believe no Person was ever yet prosecuted for a Libel, where the Word *false* was not expressly mentioned in the Indictment; therefore it appears plain to me, that Falseness must be joined to Defamation, to make a Libel.

That great Lawyer, my Lord Chief Justice Holt, says; *That whoever asserts Things in Writing, must also, at his Peril, prove them to be true.*

If what a Man has wrote or published be *Truth*, with what Conscience can a Jury bring him in guilty of writing or publishing a *false* Libel? It is surely contrary to Right Reason, and therefore should be so to Law too, to charge a Person with publishing a Libel that is false, and yet refuse him the Liberty of proving it to be true; such Refusal cannot but be, to every honest Man's Conscience, the strongest Evidence of its Truth. Can Right Reason call Truth a Crime? if not, I hope the Laws of *England* never will. Miserable indeed must be the State of that People, where writing Truth against Man, is accounted a Crime; but writing Falseness against God, none. Yet I own, I discommend, nay, highly blame, the writing of even Truth itself, if defamatory, when it concerns

concerns only private Persons: But, if the Rights or Liberties of the Publick are any ways interested, Truth, and all the Truth, however defamatory, ought always to be told; for otherwise, How could the Publick ever oppose any Oppression at all? As, suppose a Man was, by Arbitrary Power, illegally imprisoned, and denied the common Relief of the Law; in such Cases, Would not the Publick be highly concerned therein? for, Might not the same hard Treatment be every Man's Case? Should not therefore such Man publickly complain thereof, and make his true Case known to others, that they might take proper Measures to prevent its being their own?

To make a Libel of any Writing, the Words of it should not have a forced Meaning by Inuendo's, drawn from an Orator's fertile Brains, put upon them; but the Sense of them should be plain, clear, and obvious to every one; for otherwise, so great is the Lawyer's Art, that he would withdraw Treason from the most sacred Truth, and make a Libel of the Lord's Prayer: As for Instance, in these Words, 'For thine is the Kingdom;' Oh, says Mr. Attorney, that is a treasonable Expression; for by Inuendo, it is saying, the King hath no Right to the Crown. There are, indeed, no Words, which Lawyers cannot, by forced Constructions, torture into Treason; Jurymen may therefore well smile, when they see those learned and eloquent Gentlemen take such Pains to persuade them, that such Words carry a very different Sense from what their own Reason plainly tells them.

Publick Grievances can never be redressed but by publick Complaints; and they cannot well be made without the Press: Now, if publick Oppressions cannot possibly be removed without publick complaining; and, if such Complaints, though ever so just and true, should be deemed Libels against those who cause them, Would not the Rights and Liberties of the Publick be in a fine Situation? Our Laws would be then Delusions, our Rights but Shadows, and our Liberties a Dream. To secure the Lives, Liberties and Properties of the Subject from all such Oppressions, is the sole End or Intention of Juries; and while they act according to their Oaths, they will be a sufficient Guard against them.

There

There is a noble Instance of the Firmness and Integrity of a Jury, lately published in the Case of *John Peter Zenger*, Printer, at *New York*; who was prosecuted, by Information, for publishing a false Libel against the Governor. Mr. *Hamilton*, the Prisoner's Council, justly and bravely owned his Client's publishing it, but insisted, it was not *false*; and would have produced Witnesses to have proved its Truth, but was denied by the Court. In this Cause every Artifice of Arbitrary Power was used; and the Judges plainly shewed, that they sat there only during the Governor's Pleasure: Yet, notwithstanding all the partial Influence of Power, and base Direction of the Bench, the Jury, to their immortal Honour, acquitted the Prisoner, by bringing in their Verdict, *Not Guilty*.

Since which we have had at Home, at the Trial of Mr. *Owen*, for publishing the Case of Mr. *Murray*, a more glorious Instance of the Wisdom and conscientious Firmness of a Jury; for though the Prosecution was carried on against him at the Desire of the Honourable House of Commons, yet such was the invincible Integrity of those brave Gentlemen on the Jury, that, to the inexpressible Satisfaction of all honest Men, and true Lovers of their Country, and to their own eternal Honour, they acquitted him, by bringing in their Verdict, *Not Guilty*.

When Juries thus act according to their Consciences, and bravely resist the illegal Attempts of Arbitrary Power, they not only secure the Lives and Properties of their Fellow Subjects, but transmit their Names and Virtues to Posterity, in the shining Records of eternal Fame. The Conscience of a Jury is the supreme Law, the Law of Right Reason; over which, no Rhetorick from the Bar, no Direction from the Bench, should ever have the least Sway or Influence. The Hearts of honest Men are the Temples of Truth; which no Interest can corrupt, no Power or Persuasion change: They will stand, like a Rock, firm and immoveable, against all the Waves of Corruption, or Winds of Arbitrary Power.

I am, Sir, your humble Servant,

BRITANNICUS.